



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

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April 29, 2016

Dennis McLerran, Regional Administrator
EPA - Region 10
1200 6th Ave., Suite 900
Seattle, WA. 98101

Re: Nez Perce Tribe's Request that EPA Ensure that any Human Health Water Quality Criteria approved under the Clean Water Act for Idaho are Protective of Tribal Members' Fish Consumption Levels

Dear Mr. McLerran

The Nez Perce Tribe (Tribe) appreciates the Environmental Protection Agency's (EPA's) commitment to consult with the Tribe on a government-to-government basis, particularly on issues that impact treaty and trust resources, including the approval of water quality standards under the Clean Water Act.

Tribal members have fished since time immemorial for subsistence and other purposes, a right they reserved in their 1855 treaty with the United States. Nez Perce tribal members continue to be high consumers of fisheries resources inside and outside of the Nez Perce reservation, as was born out by the Tribe's recent, peer-reviewed fish consumption survey.

Due to the Nez Perce people's high fish consumption, they are disproportionately exposed to adverse human health effects as a result of low water quality standards. The Tribe has repeatedly pointed this out to the State and EPA over the last four years, as Idaho has developed water quality standards for approval by EPA (See letters to Paula Wilson, Idaho Department of Environmental Quality, copied to EPA, on: August 22, 2014, emphasizing importance of considering anadromous fish; November 13, 2014, stressing importance of considering suppression; January 16, 2015, encouraging EPA to retain a cancer risk level of 10^{-6} ; May 22, 2015, expressing concerns with Idaho's HHC policy recommendations; August 21, 2015, relaying Tribe's concerns with IDEQ's draft rule; November 5, 2015, stating Tribe's objection to proposed rate; and, December 10, 2015, conveying testimony of Samuel N. Penney, Nez Perce Tribal Executive Committee, objecting to proposed rate.) Nevertheless, Idaho Department of Environmental Quality (IDEQ) did not consult directly with the Tribe as it developed its proposed water quality standards and IDEQ's responses to the concerns raised by the Tribe (and similar concerns raised by EPA) in its submittal package

misconstrued or mischaracterized the Tribe's concerns and failed to adequately analyze or respond to the concerns.

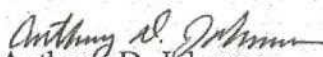
The Tribe is disturbed that the State of Idaho is now cynically relying on Nez Perce fish consumption values to justify a water quality standard that is not protective of the Nez Perce people themselves. This is illustrated by their use of Nez Perce fish consumption data for Group 2 fish at the mean value in combination with of a cancer risk level of 1-in-100,000 (or 10^{-5}). The Tribe objects to this use of its fish consumption data. When the Tribe agreed to do a fish consumption survey in cooperation with the EPA, it did not intend or expect the results of its survey would be used by the State to defend such a damaging standard for its people or its fishery resources.

The Nez Perce must be treated as a target general population for purposes of establishing protective human health criteria and water quality standards under the Clean Water Act. Incorporating information on both the Tribe's heritage consumption rates and suppression effects is necessary given the Tribe's presence in the area since time immemorial. This will ensure that new water quality standards are protective of current and future Nez Perce consumption levels.

The EPA has an obligation to honor and protect the Tribe and its members that rely upon fish and consume high amounts of fish. This obligation is grounded in EPA's trust responsibility to the Tribe and EPA's existing policy. The Tribe thus urges EPA to ensure that water quality standards are protective of tribal fish consumption levels and needs throughout the Pacific Northwest waters that fish depend on for their lifecycle. The Tribe requests that EPA take all necessary actions to accomplish this, which may include EPA promulgating water quality standards for Idaho and certainly includes EPA disapproving Idaho's standards.

The Tribe looks forward to continuing to consult with EPA on this issue which is enormously important to the health of the Nez Perce Tribe and its members.

Sincerely,


Anthony D. Johnson
Chairman